

Do adult children have an automatic right to inherit in NSW?

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When a parent passes away, many people assume that children will automatically receive a share of their parents' estate, regardless of age or circumstances. In New South Wales, however, it is not always straightforward and will depend on a variety of factors.

While parents generally have the freedom to decide how their assets are distributed after death, NSW law also recognises that, in some situations, close family members (including children) may be left without proper financial support.

Do adult children have a right to inherit?

No, adult children do not have an automatic right to inherit from their parents in NSW.

However, the absence of a right to inherit does not mean that adult children are left without options. In certain circumstances, an adult child may be able to make a legal claim against their parents' estate if they were not adequately provided for.

When there is a valid Will

In NSW, a person is generally free to decide how their estate is distributed. This is known as their 'testamentary freedom'.

From a legal standpoint, a parent can exclude an adult child from their Will.

However, just because a Will says a child does not receive anything from the estate does not mean that the child is entirely excluded.

NSW law recognises that, in some cases, strict adherence to a Will may lead to unfair or unreasonable outcomes (in the eyes of the law, not necessarily from the parent's perspective), particularly where a close family member has been left without proper financial support.

Where an *eligible person* has been left *without adequate provision*, that person may be entitled to make a Family Provision Claim (that is, contest the Will) against the estate.

What if there is no Will?

If a person dies without a valid Will (known as dying "intestate"), the *Succession Act 2006* (NSW) sets out the order for who inherits.

In general terms:

- If the deceased had a spouse or de facto partner who is also the parent of any children the deceased had, the spouse or de facto partner is prioritised.
- If the deceased had a spouse or de facto partner who is **not** the parent of any children the deceased had, then:
  - the spouse or de facto partner receives a legacy in an amount determined under the Act, and
  - the balance is then split between the spouse or de facto partner and children of the deceased.
- If the deceased did not have a spouse or de facto partner, then the estate is divided equally among any children (irrespective of the quality of the relationship between the deceased and their children).

You can learn more about the scenario of dying intestate in our earlier blog, "Why should I Have a Will and what happens if I die without one?"

Family Provision Claims

A Family Provision Claim is a legal application asking the Supreme Court of NSW to make provision for an eligible person, effectively adjusting how an estate is distributed.

Under the *Succession Act 2006* (NSW), adult children (typically biological and adopted) are considered eligible persons who can make this type of claim by virtue of their relationship with the deceased.

The Court may make an order for provision if it is satisfied that adequate provision was not made for the child's proper maintenance, education or advancement in life in the Will or otherwise. The Court looks at the adult child's circumstances at the time of the claim.

This means that even if a Will “disinherits” an adult child, the Court can intervene in some cases and award them part of the estate.

Does being an adult make a difference?

Courts generally expect adult children to be more financially independent than minors. This means adult children do not automatically succeed in family provision claims simply because they were left out of a Will.

However, adulthood does not prevent a claim from being made. Adulthood also does not necessarily mean that a child would be unsuccessful in their claim.

Each case turns on its own facts.

What factors does the Court look at when considering a Family Provision Claim?

Family provision cases are very case-specific. It will depend on the particular circumstances of the deceased and their family. Some of the main things the Court considers include:

The adult child’s financial position

This includes income, assets, debts, housing, health issues, responsibility for dependents, future earning capacity, and other sources of financial assistance that will be available to the child.

The size of the estate

Larger estates may allow for broader provision as there are greater funds to accommodate additional provision for a child. Smaller estates can limit what is reasonable or the funds available for redistribution.

The relationship between parent and child

The Court looks at the nature of the relationship over time, not just what happened at the end of life. This can include any estrangement and the reasons for it, or whether there was ongoing contact and support.

Any provision made for the child

Any gifts left for the child in the Will, or any provision made for the child through other non-estate assets (such as through joint ownership of property or via superannuation).

Any gifts or support already received

Financial help, property transfers, or significant lifetime gifts may also be taken into account.

Competing claims

The needs of spouses, partners, minor children, or other dependants are weighed alongside the adult child's claim. The Court will consider the adult child's needs balanced against the needs of others who may have a stronger or more immediate claim or need.

Importantly, the Court is not trying to make things "equal" between siblings, or to rewrite the Will. The focus is on need, not fairness.

What if the child was estranged?

Being estranged does not automatically disqualify an adult child from making a claim.

Instead, the Court will consider the reasons for the estrangement, including:

- Why did the estrangement occur?
- Who was responsible for it?
- Were there any attempts at reconciliation?
- Did the deceased continue to have a moral obligation toward the child?

In some cases, estrangement will reduce prospects of success for a claim. In others, it may be one factor that is outweighed by other more compelling reasons for the Court to allow additional provision.

What should you do if you are a parent who does not want to include an adult child in your Will?

If you are a parent who does not wish to include an adult child in your Will, it is important to approach the decision carefully and with proper advice.

While you are generally free to prepare your Will however you want and distribute your estate as you see fit, excluding a child from the Will can increase the risk of a Family Provision Claim after your death.

A lawyer experienced in estate planning will be able to provide further advice as to the risk posed and outline strategies to reduce the likelihood of a successful challenge.

Obtaining tailored legal advice can also assist in structuring your estate plan in a way that reflects your wishes while balancing the risk of disputes.

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What should you do if you are an adult child left out of a Will?

If you are an adult child who has been left out of a Will, or receives only minimal provision in a Will, further investigations and advice may help you to understand your options.

Practical first steps include obtaining a copy of the Will, finding out basic information about the estate (the size and nature of the estate), and seeking legal advice as early as possible, particularly as strict time limits apply.

Early advice can help you understand whether you may have a viable Family Provision Claim and allow you to make informed decisions before the estate is distributed.

Get help from a Wills &estates lawyer

In NSW, adult children do not have an automatic right to inherit, but the law does recognise that parents may still owe obligations to their children, even in adulthood.

Whether a claim is successful depends on individual circumstances.

If you are a parent considering their Will, or a child considering their options, obtaining early advice from a lawyer experienced in estates can make a significant difference.

E&A Lawyers has a dedicated and experienced estates team that can help you. For more information or to arrange a consultation with a lawyer, you can call or email us.

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